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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/669,547

09/24/2003

Craig Stephen Slavtcheff

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11/30/2005

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EXAMINER

YU, GINA C

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 11/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/669,547

Applicant(s)

SLAVTCHEFF ET AL.

Examiner

Gina C. Yu

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/24/03, 2/14/05
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4-6 are rejected under 35 U.S.C. 102(b) as being anticipated by LaHann et al. (US 4546112) (“LaHann”).

Claim 1 is directed to a method for removing hair comprising (i) applying to an area from which hair is to be removed a skin pretreatment composition comprising a lipophilic material; and (ii) applying onto the pretreated area of skin a depilatory composition comprising a keratin degrading agent in an effective amount to chemically react with hair to allow removal.

LaHann discloses a method of preventing and/or reducing skin irritation caused by thioglycolate depilatory agent by applying capsaicin and/or its salts to the depilated area. See abstract. The reference specifies that the term “depilated area” there refers to the area which is, or is about to be, depilated by treatment with a thioglycolate depilatory agent. See col. 2, lines 41-43; instant claim 4. The reference teaches to formulate the anti-irritant composition in the form of lotions, creams, or solution, and also teaches using lipophilic emollients including hydrocarbon oils, silicone oils, and various natural and synthetic esters. See col. 3, line 9 – col. 5, line 57; instant claims 1 and 2. Example 3 illustrates the method of applying a composition comprising an anti-

Art Unit: 1617

irritant composition, and subsequently applying the depilatory agent after 2 hours. See 5 and 6.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over LaHann as applied to claims 1, 2, and 4-6 in § 102(b), and further in view of Michaels et al. (US 3843780) ("Michaels").

While LaHann teaches mineral oil as a useful emollient for the anti-irritant composition, the reference does not specifically exemplify using mineral oil.

Michaels teaches using mineral oil to make a pretreatment composition for shaving to provides comfort, soothing effect to the skin, and no irritation. See col. 1, lines 28 –56; Example 1.

Art Unit: 1617

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the anti-irritant composition of LaHann with mineral oil as motivated by Michaels because (i) LaHann teaches mineral oil as a suitable emollient for the composition; and (ii) Michaels specifically teaches that mineral oil provides comfort, smoothing effect to the skin with reduced or no irritation. The skilled artisan would have had a reasonable expectation of successfully producing a stable anti-irritant composition containing mineral oil which provide comfort and soothing effect to the skin.

Claims 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over LaHann as applied to claims 1, 2, and 4-6 in § 102(b) as above, and further in view of Syed et al. (US 5756077) ("Syed").

As discussed above, LaHann teaches the method of treating skin area to be, or that is, depilated with a composition comprising lipophilic emollient before or after applying a composition comprising thioglycolate depilatory agent. Since the reference teaches that the pre- or post-treatment anti-irritant composition comprises a dermatologically acceptable carrier, it is obvious that the topical depilatory agent composition is also provided by a suitable carrier. See instant claim 7 (b), (ii).

LaHann does not specifically mention producing these two compositions in a kit.

Syed teaches hair protectant compositions. The reference teaches providing kits for a hair processing chemical composition and the protectant composition for the previously processed hair that are sequentially used. See col. 3, lines 12 – 32. The reference also teaches incorporating applicator, cotton (textile), and/or gloves. See col. 3, lines 24 – 32. See instant claims 8 and 9.

Art Unit: 1617

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the anti-irritant composition of LaHann with the depilatory agent composition in one kit as motivated by Syed because the latter reference teaches providing two personal care products that are used in sequence in one package as a kit for convenience.

Adding an instruction material to a known product is not patentable. See In re John Ngai and David Lin, No. 03-1524, (Fed. Cir. May 13, 2004). ("If we were to adopt Ngai's position, anyone could continue patenting a product indefinitely provided that they add a new instruction sheet to the product"). Since LaHann teaches that the claimed set of compositions are well known in the art, the addition of instructions to the products as claimed in this case is not patentable. See instant claim 7, (c).

Claim 10 is a product-by-process claim. The claim is directed to a set of products, while the claim limitation is directed to the process of using the products. It is well settled in patent law that, while product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." See In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). Therefore, since the claimed kit is an obvious assembly of the known compositions as shown by the prior arts, the claim limitation as to how much of the products are applied to the skin is not given patentable weight in this case.

Art Unit: 1617

Conclusion

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605. The examiner can normally be reached on Monday through Friday, from 9:00 AM until 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gina Yu
Patent Examiner



SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER